IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision :21st August, 2006

State of Punjab Vs. Pali and others

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. MS Sidhu, Senior Deputy Advocate General, Punjab for the appellant.

None for the respondents.

JUDGEMENT

The respondents along with their co-accused Madan Lal son of Nazir Ram (declared as a proclaimed offender during trial) were charged under Section 148 IPC read with Section 149 IPC. All of them were charged under Section 450 IPC read with Section 149 IPC for committing house tresspass in order to cause injuries to the complainant side. Pali respondent was charged under Section 326 IPC substantively for causing grievous hurt with a sharp edged weapon (Kirpan) to Mohinder Kaur PW whereas the other respondents were charged under

Section 326 IPC read with Section 149 IPC. Ram Lal respondent was charged under Section 308 IPC substantively for causing injury to Amarjit Singh PW, whereas the other respondents were charged under Section 308 IPC read with Section 149 IPC. Respondent Mansa Ram was charged under Section 325 IPC substantively for causing grievous injury to Jaswinder Kaur PW with blunt weapon whereas all other respondents were charged under Section 325 IPC read with Section 149 IPC. Similarly Sukha Ram and Mansa Ram were charged under Section 323 IPC substantively for causing simple hurt with blunt weapon to Jaswinder Pal and Resham Kaur whereas the other respondents were charged under Section 323 IPC read with Section 149 IPC.

Vide impugned judgment of learned Additional Sessions Judge, Kapurthala dated May 4, 1995, charges under Sections 308/450/326 IPC have been disturbed and instead all the respondents have been convicted under Sections 452/324/323/148 read with Section 149 IPC. They were released on probation under Section 4(1) of the Probation of Offenders Act (for short the `Act') with an undertaking to keep peace and be of good behavior for a period of two years. It was further directed that the accused shall remain under the surveillance of District Probation Officer Kapurthala under Section 4(3) of the Act. All the respondents were also ordered to pay Rs. 1,000/- each as costs of the prosecution. Aggrieved by the impugned judgement, State of Punjab has preferred the instant appeal.

The record reveals that the appeal was admitted on April 23, 1996 and bailable warrants of arrest were ordered to be issued against all the respondents to secure their presence. Record further reveals that pursuant to the aforesaid direction, all the respondents had furnished their requisite bail bonds to the satisfaction of Chief Judicial Magistrate, Kapurthala.

Today no one has turned up on behalf of the acquitted respondents. We have heard learned State counsel and with his assistance gone through the impugned judgment as also the entire paper book very minutely.

Briefly, the prosecution story runs thus:

On May 23, 1992 at 12-00 noon Amarjit Singh(PW-4) after finishing his routine work at Phagwara was returning home at village Chachoki. Madan Lal armed with a dater met him in front of latter's house and shouted upon him to call his co-accused, who were present in the nearby house of Mansa Ram. Meanwhile Pali respondent armed with a sword, Girdhari Lal and Mansa Ram respondents carrying dangs, Balwinder Kumar, Sukha and Ram Lal respondents carrying iron rods, Arjan Lal, Soma armed with Dangs and and Madan Lal alias Pappu with Dater (Datt) came from the side of the house of Hans Raj. After scaling over the wall, all of them entered into the house of Amarjit. Out of fear Amarjit Singh had closed the outer gate of his house. Mohinder Kaur, wife of Amarjit's brother, his niece Jaswinder Kaur,

sister Resham Kaur, Jaswinder Pal son of the brother of his wife and Balbir Kumar son of Jarnail Singh were already present in the house. Pali respondent opened the attack. He gave a Kirpan blow on the nose of Mohidner Kaur. Madan Lal alias Pappu accused gave a dater (datt) blow, which hit near the right ear of Resham Kaur. Arjan Lal and Soma accused exhorted their co-accused to kill Amarjit Singhand others. Balwinder Kumar inflicted two saria blows near left eye and on the face of Mohinder Kaur. Girdhari Lal inflicted dang blows on both arms of Resham Kaur. Sukha gave two iron rod blows on the head and right arm of Jaswinder Pal. Ram Lal gave saria blows to Amarjit Singh on his head and left shoulder. Mansa Ram gave dang blows on both the arms of Jaswinder Kaur. The complainant side also caused injuries to Ram Lal and Balwinder Kumar accused in their self defence. The accused ransacked the house of Amarjit Singh, damaging a door, electric meter, window panes and window nets. Thereafter all the accused fled away from the spot with their respective weapons. The entire occurrence was witnessed by Balbir Kumar son of Jit Singh. Amarjit Singh and other injured were got medico legally examined on the same day at Civil Hospital Phagwara. The statement of Amarjit Singh could be recorded only after two days i.e. on 28th of May, 1992. The cause of this delay in lodging the FIR was that talks for compromise were going on. On the basis of the aforesaid statement, formal FIR (Ex.PS/1) was recorded. After presentation of the challan,

the accused were charged as stated above.

The prosecution in order to substantiate the charges against the respondents has relied upon the evidence of PW1-Dr. Satpal, PW2-Dr. PC Gupta, PW3-Tulsi Ram, PW-4 Amarjit Singh the complainant, PW5-Jaswinder Kaur, PW6-Mohinder Kaur, PW7-Faquir Chand, PW8-Jaswinder Pal, PW9-Balbir Kumar, PW 10-SI Bachan Singh, the investigating officer and PW 11- Dr. Kailash Kapoor.

The plea taken by the respondents as emerges from their statements under Section 313 of the Code of Criminal Procedure is that Madan Lal (declared as a proclaimed offender) was forcibly lifted into the house of Amarjit. When Pali and Ram Lal went to rescue him, they were also attacked. Several persons of the village had gathered at the spot and the complainant party received injuries at their hands. Subsequently they were involved in this case.

In defence the respondents had produced Dr. RLWassan, who had medico legally examined Ram Lal and Balwinder Kumar on the day of occurrence. 3 simple injuries were found on the person of Ram Lal respondent whereas two injuries caused by sharp edged weapon were noticed on the person of Balwinder Kumar respondent.

After appreciating the entire evidence, the learned trial Court has convicted the respondents and released them on probation, as indicated hereinabove.

Mr. Sidhu learned State counsel has assailed the impugned

judgment on two fold grounds. The first limb of argument is that the learned trial Court has drawn a wrong conclusion that the non-production of x-ray is fatal to the case of the prosecution and, therefore, fracture on the person of Mohinder Kaur for the purposes of attracting Section 326 IPC and on the person of Jaswinder Kaur for the purposes of attracting Section 325 IPC is not proved. Developing his arguments, Mr. Sidhu submits that even if their skiagrams were not produced before the trial Court, that lacuna by itself was not enough to hold that the prosecution has failed to prove the grievous injuries on the persons of the complainant side. According to the learned counsel, the aforesaid grievous injuries are otherwise proved from the testimony of Dr. PC Gupta, Senior Medical Officer (PW2), who deposed that he had conducted x-ray examination of Mohinder Kaur and found fracture of nasal bone. He had also conducted x-ray of Amarjit Singh and found fracture of his skull . Similarly on x-ray of Jaswinder, he found fracture of her fore-arm at its lower end. According to the learned counsel the reasoning given by the learned trial Judge in this regard is not sustainable and, therefore, all the acquitted respondents are liable to be convicted for Sections 308/326/326 IPC as per the charge sheet. He, however, fairly states that from the evidence on record Section 450 IPC is not attracted and, thus, he does not assail the impugned judgment so far as conviction under Section 452 IPC is concerned.

At the same time, learned State counsel submits that in

case the conviction as recorded by the learned trial Court for the offences punishable under Sections 452/324/323/148/149 IPC is affirmed, in that eventuality the State shall have no grouse against the order of releasing them under Section 4(1) of the Act.

Since the learned State counsel has joined issue with regard to the medical evidence only, we have scrutinized the entire medical evidence minutely with regard to the charges under Sections 308/326/325 ICP. At the cost of repetition, we may state here that Ram Lal was charged substantively under Section 308 IPC. He was allegedly armed with a saria and gave blow on the head and left shoulder of Amarjit. As per evidence of Dr. Sat Pal (PW-1) Amarjit Singh had received the following two injuries:-

> 1. Lacerated wound 3 cms. X 1 cm on the scalp 10 cm above the left ear. Area was swollen. Fresh bleeding was present. Advised x-ray skull. A.P. Lateral view.
> 2. Multiple abrasion on the left shoulder. Injuries were caused by blunt weapon.

It is the admitted position that injury No.1 as noticed by Dr. P.C.Gupta is fracture, as per his report Exhibit PH. On the basis of the aforesaid x-ray report, he had declared the injury as grievous in nature. Dr. Satpal when stepped into the witness-box deposed that injury No.1 on the person of Amarjit Singh was on vital part (head) and he would have died but for timely medical aid and in that case the injury was sufficient to cause death in ordinary course of nature. The learned

trial Court while dealing with the charge under Section 308 IPC has observed that Dr. Satpal had admitted in his cross-examination that he had not mentioned in Exhibit DA (Bed Head Ticket of Amarjit) that the injury on his person individually or collectively could be dangerous to life. He also stated that the injured was not operated upon for the said injury and was treated in routine. In his initial medical report also there is no reference to that aspect and ultimately on the basis of fracture of the skull, he declared that injury as grievous vide report Exhibit PJ. The learned trial Judge has further observed that this witness did not explain if the injury could be dangerous to life.

The learned trial Court while considering the aforesaid weaknesses with regard to the categorical opinion along with non-availability of skiagram qua injury No.1 on the person of Amarjit Singh gave a specific finding that Section 308 IPC is not made out. We do not find any perversity in it so far as charge under Section 308 IPC is concerned.

We may make it clear that conviction of Ram Lal respondent even under Section 325 IPC substantively and his other co-accused under Section 325 IPC read with Section 149 IPC is not recorded by the learned trial Court for the reason that the prosecution has not produced the skiagram of the x-ray of Amarjit Singh injured and Dr. Satpal, who had initially declared the injury as grievous does not say a word that the same were received by him.

On the basis of the same rationale, the learned trial Court has disturbed the charge of Section 326 IPC substantively qua Pali respondent and of Section 325 IPC substantively qua Mansa Ram respondent. We feel the necessity of reproducing below the reasoning given by the learned trial Court in this regard:

> "10. The last submission of the learned counsel is that prosecution has not produced primary evidence to prove the grievous nature of the injuries and, therefore, it cannot be said that the accused are liable under Sections 326,325 IPC. The learned Additional Public Prosecutor has tried to meet this argument by contending that as the doctor made the statement on oath about the nature of the injuries o the basis of the record maintained by them, therefore, non-production of the skiagrams cannot be material circumstance. In this respect he has referred to Mouja Singh and others versus State of Punjab 1992(2) C.C.C. Page 230 (Punjab and Haryana High Court). In that case the statement of the radiologist was challenged as skiagrams and X-ray report sent by him to the police had not been produced. The view taken by their Lordships was that the non-production of these documents did not effect his testimony as he had made statement about nature of the injuries on the basis of the record retained by him. It was also observed by their Lordships that statement of Dr. Gill on this aspect was not challenged in cross-

examination. The position in the instant case is altogether different. The witnesses were medically examined by Dr. Satpal, Medical Officer. The injuries kept under observations were x-rayed by Dr. P.C. Gupta PW2. The prosecution has not relied upon the skiagrams and, therefore, Dr. P.C.Gupta could not say at which part the fractures were detected by him. According to him, the skiagrams were handed over by him to the doctor concerned by whom the injured were medically examined by Dr. Satpal who did not say anything if the skiagrams were also received by him. There was no other record with the Radiologist or the other doctor except the reports made by them. Their statements were challenged seriously in the cross-examination by the learned counsel for the accused. The accused could have the right to examine the document on the basis of which opinion was given against them by the doctor concerned and they were deprived thereof. As such, I find force in the submission of the learned counsel that on the basis of the testimony of the doctors it cannot be said that injury No. 5 of Mohinder Kaur attributed to Pali, injury No.1 on the person of Jaswinder Kaur attributed to Mansa Ram with dang and injury No.1 of Amarjit Singh attributed to Ram Lal and alleged to have been caused with a Saria were grievous in nature".

We have re-scanned the evidence of Dr. P.C. Gupta

Radiologist (PW2), who had conducted x-ray examination on all the injured. In his cross-examination he states as under:-

> "It is correct that I have not seen the skiagrams today in the Court. I cannot pin point now at which part the fracture was there since the skiagrams are not on the records. I had handed over the reports and the skiagrams to the doctor who referred the patient to me. I do not know where the skiagrams have gone now. It is wrong to suggest that I had not conducted the x-ray examination of any patient and I have made a false statement."

From the aforesaid statement one fact is very clear that when Dr. Gupta appeared in the witness-box, he simply proved his earlier reports. He had not brought any register showing the number of skiagrams prepared for the purposes of x-rays. The admitted position is that skiagrams were not shown to him in the Court as he has also stated that in the absence of skiagrams he cannot pin point at which part the fracture was there. He has also stated that he had handed over the reports and the skiagrams to the doctor, who had been attending to him. In our considered view, in the light of the aforesaid lacunae in the prosecution case, the learned trial Court has rightly arrived at a categorical conclusion that the prosecution has not been able to prove that the injuries were grievous in nature. Therefore, it has rightly diluted the gravity of the offence and convicted the respondents under Sections 452, 324, 323,148/149 IPC.

Having minutely scrutinized the impugned judgement, we find no such demonstrable perversity in the decision of the trial Court, which may call for interference of this Court. It is settled legal position that an order of acquittal is to be disturbed only when there are compelling and substantial reasons for doing so. This principle was elucidated by the Apex Court in **Ramesh Babulal Doshi vs. State of Gujarat, (1996) 9 SCC 225**, wherein it was observed as under:-

> "While sitting in judgement over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can then- and then only- reappraise the evidence to arrive at its own conclusions."

In this regard **George v. State of Kerala, (1998) Crl. L.J. 2034 (SC)** can also be read with advantage.

We may observe here that an irregularity has been committed by the trial Court to the effect that the respondents, who were substantively charged for Sections 308, 326 and 325 IPC, could still be convicted substantively for the diluted offences as stated above, on the

basis of the evidence on record, but they now stand convicted with the aid of Section 149 IPC. In our view, this irregularity has no adverse effect on merits of the case and, therefore, we ignore it.

Although the learned State counsel has not shown any grouse against the charge of Section 450 IPC as well as releasing the respondents on probation, yet we have re-appreciated the impugned judgment from that angle as well and find no infirmity in the same.

The net result is that the instant appeal filed by the State of Punjab is dismissed being devoid of any merit.

[Virender Singh]
Judge

[A.N. Jindal]
Judge

August 21, 2006.
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